

REMARKS/ARGUMENTS

Claims 1 and 4-21 were previously pending in the application. Claims 1, 11-13, 15, and 18-19 are amended herein. Claims 1 and 4-21 remain pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

37 CFR 1.75(c) Objection

On page 2 of the Office Action, the Examiner objected to Claim 15 as being of improper dependent form. Claim 15 has been amended to depend from claim 1. The Applicant submits that this amendment overcomes this objection. This amendment was not made to overcome any prior-art rejections.

35 U.S.C. §101 Rejections

On pages 2-3 of the Office Action, the Examiner rejected claims 1 and 4-21 under 35 U.S.C. §101 as directed to allegedly non-statutory subject matter.

The Examiner's reason for rejecting claims 11-13 was that "it is clear from the specification (¶82) that the network manager is a software application." Claims 11-13 have been amended to recite an apparatus rather than a network manager to clarify that these claims are directed to a device and not to software. These amendments were not made to overcome any prior-art rejections.

The Examiner's reason for rejecting claims 1, 4-10, and 14-21 is that, allegedly, the "method claims result in no transformation of an article from one state to another, nor is the claimed method steps tied to a particular machine." Claims 1, 18, and 19 have been amended to recite an apparatus-implemented method, which clearly ties the recited steps to a particular machine, *i.e.*, an apparatus.

The Examiner asserted, "The limitation of a 'computer-implemented method' is a mere field-of-use limitation and does not make the claimed method statutory." The Applicant presumes that the Examiner is referring to the Federal Circuit's recent *In re Bilski* decision. If that is not so, the Applicant respectfully requests clarification of the basis for the rejection.

The *In re Bilski* opinion provides an example of "a mere field-of-use limitation" in footnote 13, where the example is the application of the Pythagorean theorem to surveying techniques. In this example, the field of use is surveying techniques. In the present application,

the limitation that the method of claim 1 is “apparatus-implemented” is simply not a field-of-use limitation as that term is used in *In re Bilski*.

According to *In re Bilski*, a claim that is tied to a particular machine is directed to statutory subject matter. The recitation that claim 1 is directed to an apparatus-implemented method that ties the claimed method to a particular machine, *e.g.*, the particular types of apparatuses described in the specification. As such, according to *In re Bilski*, method claim 1 is directed to statutory subject matter. For similar reasons, method claims 18 and 19 are also directed to statutory subject matter. The Applicant respectfully requests therefore that the §101 rejections should be withdrawn.

Prior-Art Rejections

In pages 3-7 of the Office Action, the Examiner rejected claims 1-3, 5-6, 8, 11, 13-15, and 19 under 35 U.S.C. §103(a) as being unpatentable over Doshi et al. (U.S. Pat. No. 6,130,875) in view of Kodialam et al (U.S. Pat. App. Pub. No. 2002/0067693 A1). In pages 7-8, the Examiner rejected claim 12 under 35 U.S.C. §103(a) as being unpatentable over Doshi in view of Kodialam and in further view of the Examiner’s official notice.

Claim 1

In rejecting claim 1, the Examiner asserted that the combination of Doshi and Kodialam teaches all the recited elements of claim 1. However, the Applicant submits that the cited references do not teach all the claimed elements of claim 1.

Specifically, in rejecting claim 1, the Examiner admitted that Doshi does not teach “if sharing is available, then generating the link cost as a function of a sharing degree for the link; wherein the sharing degree is the maximum number of additional unit-bandwidth primary services that can be added to the candidate primary path without increasing bandwidth reserved on [the] link,” but argued that Kodialam teaches this element. The Examiner cited paragraph 30 of Kodialam as specifically teaching this element. The Applicant submits, however, that the cited section does not teach this requisite element.

The claimed sharing degree is a characteristic of a link in a candidate restoration path, wherein the sharing degree for the link is the maximum number of additional unit-bandwidth primary services that can be added to the corresponding candidate primary path without increasing the restoration bandwidth reserved on the link. Paragraph 30 of Kodialam discusses inter-demand and intra-demand sharing of capacity on a backup path. While Kodialam discloses

sharing backup bandwidths, the cited section does not disclose the claimed sharing degree. Neither the cited section, nor any other part of Kodialam even mentions the term “maximum,” let alone teaches calculating the maximum number of additional unit-bandwidth primary services that can be added to a candidate primary path without increasing restoration bandwidth reserved on a link in a corresponding candidate restoration path. Consequently, it cannot be said that the cited references teach this requisite element of claim 1.

Therefore, the Applicant submits that claim 1 is allowable over the cited references. For similar reasons, it is submitted that claim 11 is also allowable over the cited references. Since claims 4-10 and 14-17 depend variously from claim 1 and claims 12-13 depend from claim 11, it is submitted that those claims are also allowable over the cited references.

Claims 8 and 19

In rejecting claim 8, the Examiner asserted that Doshi teaches that “the sharability of a link in a candidate restoration path is represented by a sharing degree for the link,” wherein “the sharing degree is a maximum number of additional unit-bandwidth primary services that can be added to the candidate primary path without increasing restoration bandwidth reserved on the link.” The Examiner cited column 23 of Doshi, under the FC header, as specifically teaching this feature. The cited section teaches, in the relevant part, “When restoration capacity is shared by demands with non-overlapping failure sets for at least some demand pairs, the free capacity is increased to reflect this sharing.” Although the cited section might mention sharing and free capacity, it merely states that the free-capacity value for a link depends on whether that link allows restoration sharing and it does not correlate (a) the maximum number of additional unit-bandwidth primary services that can be added to a candidate primary path to (b) the sharability of a link in a candidate restoration path, in the manner recited. Thus, it cannot be said that the cited references teach this requisite element of claim 8.

Therefore, the Applicant submits this provides further grounds for the allowability of claim 8 over the cited references. For similar reasons, it is submitted that claim 19 is allowable over the cited references. Since claims 9-10 depend from claim 8 and claims 20-21 depend from claim 19, it is further submitted that those claims are also allowable over the cited references.

Conclusion

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire

application is now in condition for allowance, and early and favorable action is respectfully solicited.

Fees

During the pendency of this application, the Commissioner for Patents is hereby authorized to charge payment of any filing fees for presentation of extra claims under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17 or credit any overpayment to Mendelsohn, Drucker, & Associates, P.C. Deposit Account No. 50-0782.

The Commissioner for Patents is hereby authorized to treat any concurrent or future reply, requiring a petition for extension of time under 37 CFR § 1.136 for its timely submission, as incorporating a petition for extension of time for the appropriate length of time if not submitted with the reply.

Respectfully submitted,

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